3-271

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 111.

EDWARD BROUGHTON, APPELLANT,

vs.

THE CITY OF PENSACOLA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

**FILED OCTOBER 10, 1874.**

Nov 25 1876

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INDEX.


| | Original. | Print. |
|---|---|---|
| Bill | 1 | 1 |
| Subpœna | 4 | 8 |
| Demurrer | 6 | 10 |
| Leave granted to amend bill | 7 | 13 |
| Amendment to bill | 7 | 13 |
| Demurrer | 8 | 14 |
| Decree | 10 | 18 |
| Order granting appeal | 10 | 18 |
| Bond | 10 | 18 |
| Clerk's certificate | 11 | 20 |

1 Pleas held before the honorable the circuit court of the United States, fifth judicial circuit, for the northern district of Florida, western division, in a cause wherein Edward Broughton, who is a citizen and resident of the State of Georgia, is complainant, and the city of Pensacola, a public corporation in and duly created by the laws of the State of Florida, is defendant.

Now at this day, to wit, the sixteenth day of October, A. D. 1871, came the said complainant, by Richard L. Campbell and Charles W. Jones, his solicitors, and filed the following bill, to wit:

To the honorable the justices of the circuit court of the United States of America in and for the northern district of Florida, western division:

Your orator, Edward Broughton, who is a citizen and resident of the State of Georgia, brings this his bill against the city of Pensacola, a public corporation in and duly created by the laws of the State of Florida; and thereupon, humbly complaining, shows unto your honors—

That by an act of the legislature of the late Territory, now State of Florida, approved the 2d of March, A. D. 1839, the said city of Pensacola, a pre-existing corporation, was rechartered; that by the 2, 4, and 6 sections of said act the powers of said corporation were vested in a mayor and a board of seven aldermen, who should "in all cases continue to act in their respective functions" until the election and qualification of their successors; that among the powers conferred on said corporation by the 16th sec. of said act was the power to borrow money, not exceeding $5,000 in any year, and to lay and impose taxes generally and to provide for the collection thereof, provided that a higher tax than ¾ of one per cent. should not be imposed on real estate; that by an

2 act of the general assembly of the State of Florida approved the 17th of December, 1850, entitled "An act to amend the act incorporating the city of Pensacola, approved March 2d, 1839," the 16th section of the said charter of 1839 was so amended as to extend the limitation upon the power of the corporation to tax real estate from ¾ to two per cent., and the limitation of $5,000 upon the power to borrow money was repealed, and a loan of $60,000 was authorized to be effected for the purpose of constructing a plank road or railroad from the said city of Pensacola in the direction of Montgomery, in Alabama; and that by an act of the general assembly of the State of Florida, approved 3d of January, 1853, amendatory of the above-mentioned act of the 17th of December, 1850, it was provided "that the mayor and board of aldermen of the city of Pensacola, with the consent of a majority of the corporation composing said city, be, and are hereby, authorized to subscribe, in the name of the city of Pensacola, any amount of money which they may deem necessary, to any plank road or railroad leading from the city of Pensacola; and for the purpose of procuring the amount of subscription, the said city of Pensacola shall have power to borrow the same, and shall have power to impose a tax on real estate in said city at a rate not exceeding two per cent. on the assessed value of such property, and that the payment of taxes so imposed may be enforced in the same manner as in other cases."

And your orator further shows unto your honors that by an act of the general assembly of the State of Florida approved the 8th day of January, 1853, the Alabama and Florida Railroad Company was chartered for the purpose of constructing a railroad from some point on Pensacola Bay (the said city of Pensacola being the point afterwards selected) northward to the boundary-line of the States of Florida and Alabama, and there to connect with another line of railroad to be con-

structed from the city of Montgomery, in the State of Alabama, southward to the boundary-line of said States of Alabama and Florida,
3 under a charter granted by the State of Alabama to another company known as the Alabama and Florida Railroad Company; and that to avoid the confusion consequent upon the said companies having the same name, and operating a continuous line of railroad, though under two charters and organizations distinct from each other, the company chartered by the State of Florida adopted the addition "of Florida," and was thenceforth known as the Alabama and Florida Railroad Company of Florida.

And your orator further shows unto your honors that under the said act of the general assembly of the State of Florida approved January 3d, 1853, the said city of Pensacola subscribed for $250,000 of the capital stock of the Alabama and Florida Railroad Company of Florida, and in payment for which stock the said city of Pensacola executed, under the corporate seal, and delivered to the said Alabama and Florida Railroad Company of Florida, five hundred (500) bonds of $500 each, which recite that they were issued in conformity with the 2d section of the said act approved the 3d of January, 1853, all payable twenty years after date, (the deliveries of bonds being at various times, as the work progressed, the dates of the several deliveries vary from 1st January, 1857, to 1st July, 1861, inclusive,) to the said Alabama and Florida Railroad Company of Florida, or bearer, with interest at the rate of seven per cent. per annum, payable semi-annually on the 1st day of January and the 1st day of July in each year between the date and maturity of the bonds, on the delivery of the interest-coupons of $17$\frac{50}{100}$ each attached to said bonds, as said coupons matured, at such bank in the city of New York as the treasurer of the said city of Pensacola might direct; and that your orator is the lawful holder of sixteen hundred and ninety of said coupons now past due, to wit: Seventy-seven due 1st January, 1865, and seventy-eight due 1st July, 1865; seventy-five due 1st January, 1866, and seventy-four due 1st July, 1866; seventy-four 1st January, 1867, and seventy-four due the 1st of July,
4 1867; eighty due the 1st of January, 1868, and one hundred and sixty-six due the 1st of July, 1868; one hundred and seventy due the 1st of January, 1869, and one hundred and seventy due the 1st of July, 1869; one hundred and seventy due the 1st of January, 1870, and one hundred and fifty-two due the 1st of July, 1870; and one hundred and seventy due the 1st of January, 1871, and one hundred and seventy due the 1st of July, 1871.

And your orator further shows unto your honors that the said city of Pensacola has never made any provision for the payment of said coupons at any bank in the city of New York, or in any other way or place; that until about the 1st of January, 1871, the said city received the said coupons in payment for taxes, although the taxes assessed were never sufficient to absorb the said coupons as they matured; but that since the 1st of January, 1871, the said city has utterly refused and still refuses even to recognize its obligation to pay said coupons.

And your orator further shows unto your honors that on the 1st of April, 1870, six judgments, amounting, in the aggregate, to $12,363$\frac{74}{100}$ founded upon coupons of the bonds issued as aforesaid by the city of Pensacola, were rendered in favor of persons other than your orator, against the said city of Pensacola, by the circuit court of Escambia County in said State of Florida; that executions were issued on said judgments, and that the said executions remain wholly unsatisfied, because the said city of Pensacola has no property, real or personal, out

of which the said executions can be satisfied; and your orator alleges that the suits in which said judgments were rendered were commenced on the 21st of September, 1867.

And your orator further shows unto your honors that under the 30th section of an act of the legislature of the State of Florida entitled "An act to provide for the incorporation of cities and towns, and to establish a uniform system of municipal government in this State," approved August 6th, 1868, the mayor and board of aldermen, who held
5 their offices under the charter of the 2nd of March, 1839, above referred to as amended by the said acts of the 17th of December, 1850, and the amendatory act of the 3d of January, 1853, did on the 23d of November, 1868, surrender the said charter of the 2d of March, 1839; and on the 25th of January, 1869, a new organization of said city, under the act of 6th of August, 1868, was completed by the election of a mayor and board of aldermen.

And your orator further shows unto your honors that another act was passed by the legislature of the State of Florida, approved the 4th of February, 1869, entitled, "An act to provide for the incorporation of cities and towns, and to establish a uniform system of municipal government in the State," the 30 section of which act is in the same terms as the 30 section of the act of the 6th of August, 1868, with the single exception that in the act of the 4th of Feby., 1869, nine months were allowed instead of six, as in the act of the 6th of August, 1868, for the re-organization of cities and towns; and both sections in both acts had reference exclusively to the reorganization of pre-existing corporations; that the 1st, 2d, 3d, 4th, 5th, 6th, and 7th sections of both of said acts of 1868 and 1869, having reference exclusively to the establishment of municipal corporations in communities where none previously existed, are substantially the same; that the mayor and board of aldermen of the city of Pensacola permitted the nine months allowed by the said 30th section of the act of 1869 to pass without re-organization the city government (if, indeed, any re-organization was necessary) as had been done under the act of the 6th of August, 1868; and that on the 26th of December, 1870, a meeting of citizens residing within the corporate limits of the said city of Pensacola assembled, pursuant to a notice previously given, as provided by the 2d section of the said act of 4th of February, 1869, and signed by the mayor and a majority of the board of aldermen, which meeting then and there proceeded to create what is now called by its creators a new and distinct corporation of the city of Pensacola, enjoying all the privileges of the old one, but happily
6 relieved from all its obligations.

And your orator further shows unto your honors that the following persons were the last who filled the offices of mayor and aldermen as provided by the 5th sec. of the charter of 2d of March, 1839, to wit: Sewall C. Cobb, mayor; William McK. Orthing, E. Haines, James Knowles, James W. Hall, I. Dennis Wolf, and George Pfeiffer; and that all these persons who were and are still corporators of the said city of Pensacola, residents thereof, and citizens of the State of Florida, (with the exception of James W. Hall, who has removed from said State,) ceased to exercise their respective functions as mayor and aldermen under said charter on the 23d of November, 1868; that the last persons who filled the offices of mayor and aldermen under the re-organization of the corporation of the city of Pensacola under the act of the 6th of August, 1868, were F. C. Humphreys, mayor; Sewall C. Cobb, Augustus Dupont, Asa B. Munn, David Tobin, Benjamin Chandler, George E. Wentworth, and Salvador T. Pons, aldermen; and that all these per-

sons, who are and were corporators of the said city of Pensacola, residents thereof, and citizens of the State of Florida, did on the 26th day of December, 1870, cease to exercise their respective functions as mayor and aldermen under the re-organization pursuant to the provisions of the act of the 6th of August, 1868; and that the officers of what is claimed to be the new corporation created on the 26th of December, 1870, are as follows: F. C. Humphreys, mayor; Heraldo Hernandez, George H. O'Neal, Augustus Dupont, Asa B. Munn, George E. Wentworth, George Pfeiffer, David Tobin, John C. Whiting, and William E. Anderson.

And your orator further shows unto your honors that the present officers of the city of Pensacola refuse to pay or make provision to pay your orator's said coupons, because they insist that they represent and are the officers of a new and distinct corporation from the one which issued said bonds and coupons; and that said new corporation is
7 not responsible for the debts and obligations of the old corporation of Pensacola; that the persons who last held office and exercised authority under the charter of the 2d of March, 1839, as well as those who last held office & exercised authority under the organization by virtue of the act of the 6th of August, 1868, insist that their authority has been superseded; the former by the latter, and the latter by the action of the corporators on 26th of December, 1870, if not by the operation of the act of 4th of February, 1869; and that the corporators of the city of Pensacola refuse to take any steps whatever looking to the payment of your orator's just demands in the premises, under the delusion that all the debts and liabilities, including said bonds and coupons, have been discharged by operation of law, growing out of their own action.

All which actings, doings, and pretences are contrary to equity and good conscience, and tend to the manifest injury of your orator.

To the end, therefore, that the city of Pensacola may true, direct, and perfect answers make to the matters and things above set forth,

And that your honor may render a decree in favor of your orator against the said city of Pensacola for the amount of the said sixteen hundred and ninety (1,690) past-due coupons held by your orator, with interest thereon, and that the said city of Pensacola shall, upon its failure to pay the amount of said decree and costs, be required to levy a tax according to the provisions of the said charter of the 2d of March, 1839, as amended by the said acts of the 17th of December, 1850, and the 3d of January, 1853, upon the property, real and personal, within the corporate limits thereof sufficient to satisfy said decree and the costs of this suit; and that in default thereof that an officer of this court may be required to assess and collect such tax to an amount sufficient to satisfy said decree, the costs of this suit, as well as of assessing, collecting, and paying over the same; and that your honors may grant unto
8 your orator such other and further relief as to your honors may seem meet and agreeable to equity and good conscience:

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the city of Pensacola, commanding it, on a certain day and under a certain penalty, to be and appear before the judges of this honorable court at a time and place therein to be mentioned, to answer the

premises and to abide such order and decree therein as to your honors shall seem proper and agreeable to equity and good conscience.

EDWARD BROUGHTON,
*Complainant.*
RICHD. L. CAMPBELL,
C. W. JONES,
*Solicitors.*

(Endorsement:) Edward Broughton vs. The City of Pensacola. Filed October 16, 1871. M. P. de Rioboo, clerk. C. W. Jones & Richd. L. Campbell, solicitors.

Whereupon a writ of subpœna issued from the clerk's office aforesaid, which, with the return and endorsements thereon, is in the words and figures following:

The President of the United States to the City of Pensacola, a public corporation in and duly created by the laws of the State of Florida, greeting:

9 You are hereby commanded and strictly enjoined that, laying all other business aside, and notwithstanding any excuse, you personally be and appear before the judge of our circuit court of the United States, for the northern district of Florida, at the rule-day of said court to be held at the clerk's office in the city of Pensacola, on the first Monday of December next, 1871, to answer to a bill of complaint exhibited against you in our said court by Edward Broughton, who is a citizen and resident of the State of Georgia, and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under a penalty of five hundred dollars.

Witness the Hon. Salmon P. Chase, Chief-Justice of the United States Supreme Court, at the city of Pensacola, in said northern district of Florida, the sixteenth day of October, in the year one thousand eight hundred and seventy-one.

{ U. S. CIRCUIT COURT NORTHERN DISTRICT OF FLORIDA, 5TH CIRCUIT. } M. P. DE RIOBOO, *Clerk.*

The defendant named in the foregoing subpœna is hereby notified and required to enter an appearance to the bill of complaint herein filed on or before the first Monday in December next, or the same may be taken as confessed.

This October 16th, A. D. 1871.

{ U. S. CIRCUIT COURT NORTHERN DISTRICT OF FLORIDA, 5TH CIRCUIT. } M. P. DE RIOBOO, *Clerk.*

(Endorsement:) Edward Broughton vs. The City of Pensacola. Subpa in chancery. Issued Oct. 16th, 1871. M. P. de Rioboo, clerk. Richd. L. Campbell, Chas. W. Jones, solicitors.

10 James W. Hall resides in the State of Alabama, & therefore there is no service on him.

Served the above subpœna by delivering copies thereof to Sewall C. Cobb, as mayor, William McKinzie Orthing, E. Haines, James Knowles,

I. Dennis Wolf, and George Pfeiffer, as aldermen of the said city of Pensacola, under the charter of the said city of 2d March, 1839; and also by serving copies of said subpœna on F. C. Humphreys, as mayor, Sewall C. Cobb, Augustus Dupont, Asa B. Munn, David Tobin, Benjamin Chandler. George E. Wentworth, and Salvador T. Pons, as aldermen, under the organization of the said city of Pensacola under the act of the legislature of the State of Florida of 6th of August, 1868; and also by serving copies of said subpœna on F. C. Humphreys, as mayor, Heraldo Hernandez, George H. O'Neal, Augustus Dupont, Asa B. Munn, George E. Wentworth, George Pfeiffer, David Tobin, John C. Whiting, and William E. Anderson, as alderman, under the organization of the said city of Pensacola under the act of the legislature of 4th of February, 1869, at the city of Pensacola, in northern district of Florida, this 21st day of October, A. D. 1871.

SHERMAN CONANT,
*United States Marshal Northern Dist. Florida,*
Pr. HARRY C. CAMPBELL,
*Deputy.*

Filed Oct. 28th, 1871.

M. P. DE RIOBOO, *Clerk.*

And afterwards, to wit, on the 30th day of December, in the year of our Lord one thousand eight hundred and seventy-one, the defendant, by its solicitor, filed its demurrer to the bill of complaint of the complainant, in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Florida, 5th judicial circuit.

EDWARD BROUGHTON
*vs.*
THE CITY OF PENSACOLA.

11 *The demurrer of the City of Pensacola to the bill of complaint of Edward Broughton.*

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur thereto, and for cause of demurrer sheweth that the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any discovery or relief from or against this defendant touching the matters contained in the said bill, or any of such matters. Wherefore, and for divers other causes of demurrer appearing in the said bill of complaint, this defendant doth demur to the said and to all the matters and things therein contained, and humbly prays the judgment of this court whether the said defendant shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

I certify that, in my opinion, the foregoing demurrer of the city of Pensacola is well founded in law, and proper to be filed in the above case.

C. C. YOUGE,
*Solicitor for Deft.*

UNITED STATES,
*Northern Dist. of Fla.:*

F. C. Humphreys, mayor of the city of Pensacola, being duly sworn, says he has heard the foregoing demurrer read, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

F. C. HUMPHREYS,
*Mayor.*

Sworn to & subscribed before me this 30th day of December, 1871.
M. P. DE RIOBOO, *Clerk.*

(Endorsements:) Edward Broughton vs. City of Pensacola.
12 Demurrer. Filed Decr. 30th, 1871. M. P. de Rioboo, clerk. C. C. Youge, solicitor for deft.

And afterwards, to wit, on the fifth day of February, in the year of our Lord one thousand eight hundred and seventy-two, the complainant, by his solicitors, filed the following order setting down cause for argument on the complainant's bill and the respondent's demurrer, in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Florida, western division. Rule-day of February, A. D. 1872.

EDWARD BROUGHTON
*vs.*
THE CITY OF PENSACOLA. } In equity.

The above-stated case is hereby set down for argument on the complainant's bill and the respondent's demurrer.

RICHD. L. CAMPBELL & C. W. JONES,
*Sol. for Complainant.*

C. C. YOUGE, Esq.,
*Solicitor for Respondent:*

You are hereby notified of the entry of the above order in the above-stated case.
Feby. 5, 1872.

RICHD. L. CAMPBELL & C. W. JONES,
*Sols. for Complainant.*

(Endorsements) Edward Broughton vs. The City of Pensacola.
13 Order setting case for hearing. Filed February 5th, 1872. M. P. de Rioboo, clerk. R. L. Campbell & C. W. Jones, sols. for complt.

At a regular term of the circuit court of the United States for the fifth judicial circuit of the northern district of Florida, begun and held at Pensacola on Monday, the fourth day of March, A. D. 1872.

WEDNESDAY, *March 6th, A. D.* 1872.

Present, Hon. Philip Frazer, judge, presiding; R. L. Campbell & C. W Jones, solrs.; C. C. Youge, solicitor.

EDWARD BROUGHTON
*vs.*
THE CITY OF PENSACOLA. } Bill in chancery.

On motion of complainant's solicitor, it is ordered that leave be granted to amend bill, and cause continued.

And afterwards, to wit, on the 9th day of March, in the year of our Lord one thousand eight hundred and seventy-two, the complainant, by his solicitors, filed the following notice of amendment of bill, in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Florida, 5th judicial circuit.

EDWARD BROUGHTON
*vs.*
CITY OF PENSACOLA. } In chancery.

To C. C. YOUGE, Esq.,
*Solicitor in above case for Respondent:*

You will take notice that, under leave of the court, the following amendments have this day been made to complainant's bill in said case:

On the 5th page of said bill, referring to the $250,000 of bonds, the amendment is in these words: "Which recite that they were issued in conformity with the 2d section of the said act approved the 3d of January, 1853."

On the 6th page the amendment is in the following words: "And your orator shows unto your honors that on the 1st of April, 1870, six judgments, amounting, in the aggregate, to $12,363.74, founded upon coupons of the bonds issued as aforesaid by the city of Pensacola, were rendered in favor of persons other than your orators against the said city of Pensacola by the circuit court of Escambia County, in said State of Florida; that executions were issued on said judgments, and that said
14 executions remain wholly unsatisfied, because the said city of Pensacola has no property, real or personal, out of which said executions can be satisfied. And your orator alleges that the suits in which said judgments were rendered were commenced on the 21st of September, 1867."

RICHD. L. CAMPBELL & C. W. JONES,
*Sols. for Complt.*

PENSACOLA, *March 9th*, 1872.

(Endorsements:) Edward Broughton vs. City of Pensacola. Notice of amendment.

Copy of within served on C. C. Youge March 9th, 1872.
C. C. YOUGE,
Per A. E. MAXWELL, *Atty.*

And afterwards, to wit, on the thirtieth day of March, in the year of our Lord one thousand eight hundred and seventy-two, the defendant filed its demurrer, in the words and figures following:

Circuit court of the U. S. for northern district of Florida.

EDWARD BROUGHTON
*vs.*
THE CITY OF PENSACOLA.

*The demurrer of the City of Pensacola to bill of complaint of Edward Broughton.*

The defendant, by protestation, not confessing or acknowedging all or any of the matters and things in said bill of complaint to be true in

such manner and form as the same are therein or thereby set forth and alleged, doth demur thereto, and, for cause of demurrer, sheweth that the said complain't hath not by his said bill made such a case as entitles him in a court of equity to any *discovery* or relief from
15 or against this defendant touching the matters contained in the said bill, or any such matters.

I certify that, in my opinion, the foregoing demurrer of the City of Pensacola to the bill of complaint is well founded in law, and proper to be filed in the above cause.

C. C. YOUGE,
*Solicitor for Deft.*

NORTHERN DISTRICT OF FLORIDA:

E. Haynes, mayor of the city of Pensacola, being duly sworn, says that he has read the foregoing demurrer, and that the same is not interposed for delay.

E. HAINES,
*Mayor.*

Sworn to and subscribed before me this 30th day of March, A. D. 1872.

M. P. DE RIOBOO,
*Clerk.*

(Endorsements:) Edward Broughton vs. City of Pensacola. Filed March 30th, 1872. M. P. de Rioboo, clerk.

And afterwards, to wit, on the 6th day of May, in the year of our Lord one thousand eight hundred and seventy-two, the complainant, by his solicitors, filed in the clerk's office order setting down cause for hearing, in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Florida, in the 5th judicial circuit, at Pensacola. Rule-day of May, (6th,) 1872.

16 EDWARD BROUGHTON
*vs.*
THE CITY OF PENSACOLA. } In chancery.

It is ordered that the above cause be, and the same is hereby, set down for a hearing on the rule-day in June next, or at any special term of said court which may be held before then, or thereafter, upon the complainant's amended bill and the defendant's demurrer thereto.

RICHD. L. CAMPBELL & C. W. JONES,
*Sols. for Complt.*

To Messrs. C. C. YOUGE & A. E. MAXWELL, *Sols for Deft.:*

GENTLEMEN: You are hereby notified of the entry of the above order this day.

6th May, 1872.

RICHD. L. CAMPBELL,
C. W. JONES,
*Sols. for Complt.*

(Endorsements:) Edward Broughton vs. The City of Pensacola; filed May 6th, 1872. M. P. de Rioboo, clerk.

And afterwards, to wit, on the third day of February, in the year of our Lord one thousand eight hundred and seventy-three, the complainant, by his solicitors, filed in the clerk's office order setting down cause for hearing, in the words and figures following, to wit:

17 Rule-day of February, (3d,) 1873. In the circuit court of the United States for the northern district of Florida, in the 5th judicial circuit, at Pensacola.

EDWARD BROUGHTON
*vs.*
THE CITY OF PENSACOLA. } In chancery.

It is ordered that the above cause be, and the same is hereby, set down for a hearing at the next regular term of said court upon the complainant's amended bill and the defendant's demurrer thereto.

RICHARD L. CAMPBELL, & C. W. JONES,
*Sols. for Complt.*

To Messrs. C. C. YOUGE & A. E. MAXWELL, *Sols. for Dfts.:*

GENTLEMEN: You are hereby notified of the entry of the above order this day, 3d February, 1873.

RICHD. L. CAMPBELL & C. W. JONES,
*Sols. for Complt.*

(Endorsements:) Edward Broughton vs. The City of Pensacola. Filed February 3d, 1873. M. P. de Rioboo, clerk.

And afterwards, to wit, on Monday, the ninth day of March, in the year of our Lord one thousand eight hundred and seventy-four, at a regular term of the circuit court of the United States for the fifth judicial circuit of the northern district of Florida, held at the city of Pensacola, the honorable Philip Frazer, judge, presiding, the following order was made:

18 Circuit court of the United States.

EDWARD BROUGHTON
*vs.*
THE CITY OF PENSACOLA.

The above cause having been duly set down for hearing on demurrer to the complainant's bill, and the solicitors for the respective parties having been heard, and the questions of law arising on the said demurrer having been considered by the court, it is ordered, adjudged, and decreed that the said demurrer of defendant to the said bill of complaint be sustained and the said bill be dismissed.

And afterwards, to wit, on the said 9th day of March, in the year of our Lord one thousand eight hundred & seventy-four, the said complainant, during the said term, in open court, applied for an appeal from the said decree to the Supreme Court of the United States, which said application is in the following words, to wit:

EDWARD BROUGHTON
*vs.*
THE CITY OF PENSACOLA.

Now, this day, came the defendant in the above-stated case, and in open

court prayed for an appeal to the Supreme Court of the United States from the decree of this court dismissing his bill of complaint; which appeal is hereby granted.

And afterwards, to wit, on the twentieth day of August, in the year of our Lord one thousand eight hundred and seventy-four, the complainant filed his bond, which, with the approval thereof, is in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Florida.

Know all men by these presents that we, Edward Broughton, of the State of Georgia, and John T. Broughton, of Butler County, Alabama, and John Penney, of Escambia County, State of Florida, are held
19 and firmly bound unto the City of Pensacola, State of Florida, in the sum of one thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents.

Given under our hands and seals this 30th day of July, A. D. 1874.

The condition of the above obligation is such that, whereas the said circuit court, on the 9th day of March, A. D. 1874, did by a final order and decree dismiss a bill in equity filed by the said Edward Broughton against the said City of Pensacola; and whereas the said Edward Broughton, in order to obtain a reversal of said order and decree, hath prayed for and obtained an appeal to the Supreme Court of the United States:

Now, therefore, if the said Edward Broughton shall prosecute his appeal to effect, and shall answer all damages and costs if he shall fail to make good his said appeal, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

EDWARD BROUGHTON. [SEAL.]
JONH T. BROUGHTON. [SEAL.]
JOHN PINNEY. [SEAL.]

Approved.

W. B. WOODS,
*U. S. Circuit Judge.*

STATE OF FLORIDA, *Escambia County:*

John T. Broughton and John Pinney, sureties in the above bond, being duly sworn, say that we are each worth the amount of the above bond over and above all our debts and legal exemptions.

JOHN T. BROUGHTON.
JOHN PINNEY.

Sworn to and subscribed before me this 30th day of July, A. D. 1874.

M. P. DE RIOBOO, [L. S.]
*U. S. Commr., Nor. Dis. Fla., at Pensacola.*

20 STATE OF FLORIDA, *Escambia County:*

I hereby certify that I have satisfactory evidence that John T. Broughton and John Pinney, the sureties in the above bond, are each good and responsible for the amount thereof.

In testimony whereof I have hereunto set my hand and seal this 30th day of July, A. D. 1874.

M. P. DE RIOBOO, [L. S.]
*U. S. Commr., Nor. Dis. Fla., at Pensacola.*

(Indorsements:) Filed August 20th, 1874. M. P. de Rioboo, clerk. U. S. circuit court, northern district of Florida, at Pensacola.

UNITED STATES OF AMERICA,
*Northern District of Florida, Western Division:*

I, Maximo P. de Rioboo, clerk United States circuit court in and for the northern district of Florida, at Pensacola, in said division, do hereby certify that the foregoing pages, numbered from one to twenty, inclusive, constitute a true copy of all the proceedings and a correct transcript of the record of the judgment in the case of Edward Broughton, complainant, and the City of Pensacola, defendant, as appears upon the files and records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this the first day of October, in the year one thousand eight hundred and seventy-four.

[SEAL.] M. P. DE RIOBOO,
*Clerk.*

(Indorsement on cover:) No. 111. Edward Broughton, appellant, vs. The City of Pensacola. N. Florida C. C. U. S. Filed 19th October, 1874.

# In Supreme Court of the United States,

OCTOBER TERM, 1876.

EDWARD BROUGHTON, APPELLANT,

No. 111.] vs.

THE CITY OF PENSACOLA, APPELLEE.

*On Appeal from the Circuit Court of the United States for the Northern District of Florida.*

Appellant's Brief

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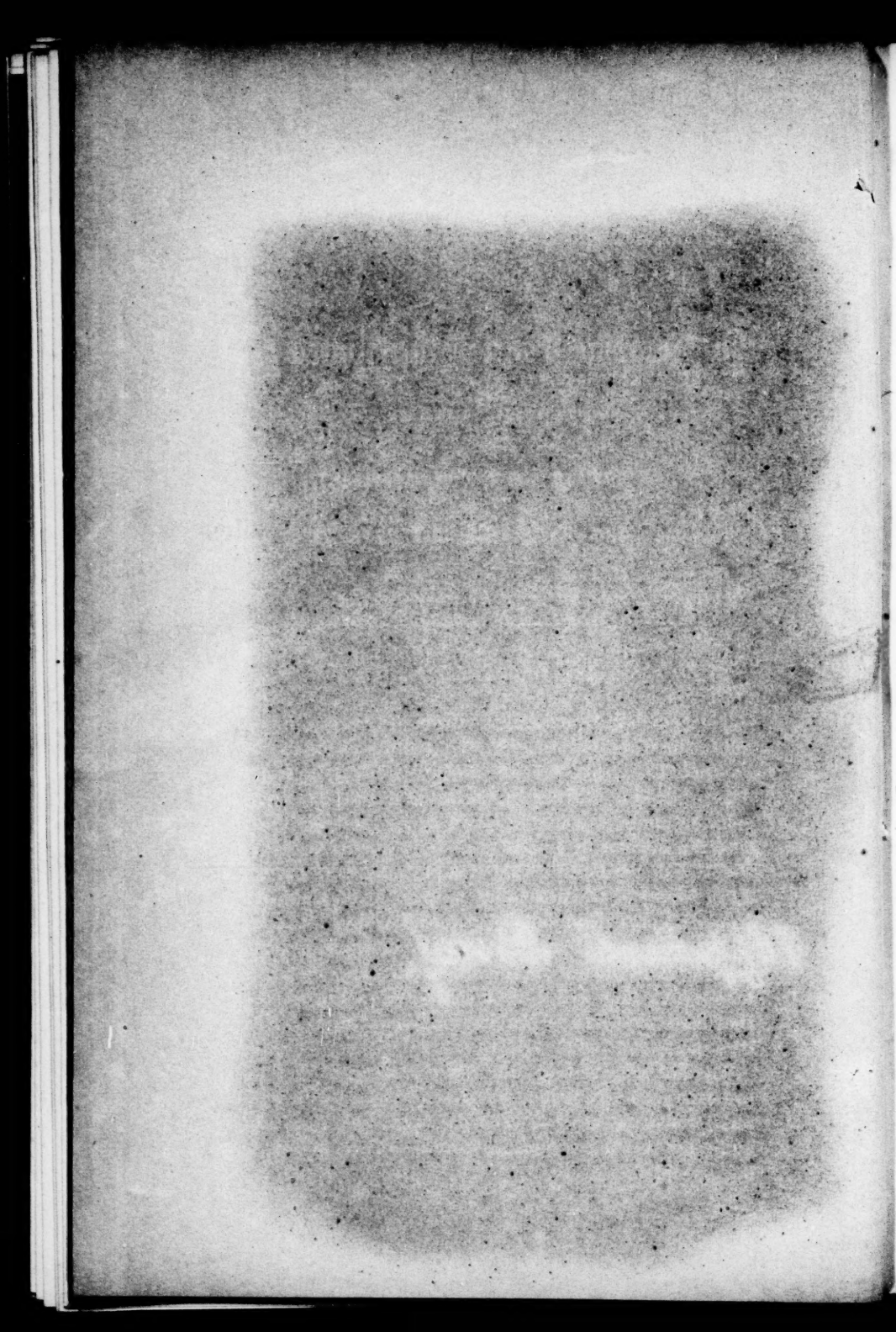

# In Supreme Court of the United States,

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THE CITY OF PENSACOLA, APPELLEE.

*On Appeal from the Circuit Court of the United States for the Northern District of Florida.*

## STATEMENT OF FACTS.

The appellant Broughton, a citizen of Georgia, exhibited his bill in the Circuit Court of the United States for the Northern District of Florida, against the City of Pensacola, a municipal corporation created by the laws of Florida, praying the court to render a decree in his favor for the amount due upon certain coupons of bonds issued by the defendant in aid of the Alabama & Florida Rail Road Company of Florida; that upon failure of the defendant to pay the amount of the decree and costs, defendant be required to levy a tax according to certain acts, set forth in the bill, sufficient to pay the decree; that in default of this, the court appoint an officer to assess and levy and collect a tax and pay it over to satisfy the decree, and further praying for general relief. (See prayer on page 4 of printed record.)

The bill alleges that the City of Pensacola, at that time a pre-existing corporation, was re-chartered by an act of the territorial legislature of Florida, approved March 2d, 1839, and after reciting various acts and sections of acts showing

the power of the corporation, and the various changes made from time to time, alleges that by an act of the General Assembly of Florida, approved January 3d, 1853, amendatory of an act of December 17th, 1850, the mayor and aldermen of the city, with the consent of a majority of the corporation, &c., were authorized and empowered to subscribe any amount of money to any rail road leading from the city of Pensacola, and for the purpose of procuring the amount of the subscription, the city was empowered to borrow the same and levy a tax of not exceeding two per cent., &c.

The bill further states, that the Alabama & Florida Rail Road Company was chartered in 1853, for the purpose of constructing a rail road from some point on Pensacola Bay (Pensacola being the point selected) to a point on the State line, where it connects with a rail road from the City of Montgomery in the State of Alabama, then known as the Alabama & Florida Rail Road of Alabama.

The bill further states, that under the act recited the City of Pensacola subscribed $250,000 of the capital stock of said rail road company, and in payment executed and delivered to said rail road company (500) five hundred bonds for $500 each under its corporate seal, reciting that the bonds were issued in conformity with the second section of the act of 1853, payable to said rail road company or bearer, with coupons for payment of interest at the rate of seven per cent. per annum, payable semi-annually at such bank in the city of New York as the city treasurer might direct; that these bonds were delivered as the work on the rail road progressed at various times between the first of January, 1857, and the first of July, 1861, inclusive; that the city never made provisions for the payment of the coupons at any bank in New York or elsewhere, or at any place or in any way; that up to 1871 the city received the coupons in payment of taxes, but the taxes assessed were never sufficient to absorb the coupons; that since January 1st, 1871, the city has utterly refused, and still refuses, even to recognize its obligation to pay said bonds or coupons.

The bill further alleges, that the complainant is the lawful

holder of 1690 of the coupons for $17 50 each, due before the filing of the bill at various dates set forth; and that on April 1st, 1870, in suits commenced September 21st, 1867, judgments were rendered against the City of Pensacola, in favor of persons other than complainant, for $12,503 74 upon coupons upon said bonds, and that execution issued on said judgments remain unsatisfied, "because the City of Pensacola has no property, real or personal, out of which said executions could be satisfied."

The bill further alleges, that under the 30th section of "an act to provide for the incorporation of cities," &c., approved August 30th, 1868, the mayor and board of aldermen, who held office under the charter of 1839 as previously amended, surrendered the charter, and on the 25th January, 1869, there was a new organization under the act of 1868. In 1869 another act was passed by the legislature of Florida, similar to the act of 1868, under which a new organization was effected, but after nine months had elapsed from the passage of the act.

The bill then sets forth the names of the persons holding the various municipal offices, and when they ceased to act, &c., and shows that no persons are filling the offices of the corporation, or claiming the right to do so, save those in office under the re-organization effected in 1870.

The bill further alleges, that the present officers refuse to pay, or make any provision whatsoever to pay, orator's coupons, because they insist that the present "City of Pensacola" is a new and different corporation from the old one, and not responsible for its debts, and that said corporation utterly refuses to take any steps looking to the payment of orator's demand.

The defendant put in a general demurrer, (see page six, printed record,) and the court sustained it and dismissed the bill, (see page ten, printed record.)

## ASSIGNMENT OF ERROR.

Edward Broughton
vs.
The City of Pensacola. } Supreme Court of the United States, October Term, 1876.

Now at this term, comes the said Edward Broughton, by his attorney, Samuel F. Rice, and says that in the record and proceedings aforesaid there is manifest error in this, to-wit:

1st. The court below erred in sustaining the demurrer to the bill.

2d. The court below erred in dismissing the bill.

3d. The court below erred in denying any relief.

4th. The court below erred in not rendering a decree against defendant for the amount due upon the demand set forth in the bill.

5th. The court below erred as shown by the final decree.

And the said Edward Broughton prays that the decree aforesaid, sustaining the demurrer to complainant's bill and dismissing the same, may be reversed, annulled, and altogether held for naught, and that he may be restored to all things which he hath lost by occasion of said decree.

SAMUEL F. RICE,
Attorney for Appellant.

## ARGUMENT.

The appellant contends:

1st. That the City of Pensacola, which was at that time a city existing under a special legislative charter (the act of 1839 and its amendments) contracted the debt sued on: That by subsequent surrender of the charter of said city, or by force of the last part of section 30 of the "Act to provide for the incorporation of cities and towns, and *to establish an uniform system of municipal* government in this State," approved February 4th, 1869, [hereinafter set forth,] the said city ceased to exist, and that hence no *action at law* will lie against it or against the new corporation of the same name, which came into existence under the general act of 1868 or the general act of 1869, to enforce debts created and due by the old corporation.

2d. That the power given the old city to tax for payment of bonds issued in payment of the stock subscribed, became part and parcel of the contract of the old corporation, here sought to be enforced, and indestructible by subsequent destruction or change of the old municipal corporation. That this power to tax remained *a trust* which those equitably interested therein can demand to be enforced in a court of equity, although there may be no trustee of whom the execution of the trust can be demanded at law, or no trustee existing after the dissolution of the old corporation.

The demurrer, which is general, admits every fact properly pleaded and is a waiver of any formal defects. If the complainant below was entitled to any relief, a demurrer to the whole bill is bad.

Livingston v. Story, 9 Peters, 633.

The Federal courts will take judicial notice without proof, of the laws of the several States and also of their laws while in a territorial condition.

Pennington v. Gibson, 16 Howard, 65.

Fremont v. United States, 17 Howard, 542.

The charter of a public municipal corporation, will be judicially noticed.

State v. Aldermen, &c., 11 Humphries, 212.

Smoot v. Mayor, 24 Ala. 121.

The various statutes and laws necessary to be referred to in this argument, are as follows:

The act approved January 3d, 1853; authorizing the subscription and taxation to pay it, is as follows:

"SEC. 2. Be it further enacted, That the mayor and board "of aldermen of the City of Pensacola, with the consent of a "majority of the corporation composing said city, be and they "are hereby authorized to subscribe in the name of the City "of Pensacola, any amount of money which they may deem "necessary to any plank-road or railroad leading from the "City of Pensacola, and for the purpose of procuring the "amount of subscription the said City of Pensacola shall

"have power to borrow the same, and shall have power to "impose a tax on real estate in said city at a rate not exceed- "ing two per centum on the assessed value of such proper- "ty, and that the payment of the taxes so imposed may be enforced in the same manner as in other cases."

An act of the Florida Legislature, approved August 6th, 1868, entitled "An act to provide for the incorporation of cities and to establish a uniform system of municipal government," was passed, it is presumed, to carry out the Constitutional mandate that "the Legislatare shall establish a uniform system of county, township and municipal government."—(Art. IV. § 21, Constitution of 1868.)

This act provided in substance that the male inhabitants of any hamlet, village or town in the State, not less than one hundred in number, might establish for themselves a municipal government, with corporate powers and privileges, under the provisions of this act, and then proceeded to declare how such municipal government should be organized, and what their powers and liabilities should be, &c.

Section 30 of this act was as follows: Be it enacted, &c., "That all the powers and privileges conferred in and by this act, may be exercised by any city or town, within the limits of this State, heretofore incorporated, and it shall be lawful for any previously incorporated city or town to reorganize their municipal government under the provisions thereof, by a voluntary surrender of their charter and privileges, and by an organization under this act; *and upon a failure upon the part of any incorporated town or city, to accept the provisions of this act within six months after its approval, all the acts vesting such city or town with power are hereby repealed.*"

(See Laws of Florida, 1868, p. 118.)

Afterwards the Legislature passed an act, approved February 4th, 1869, having the same title as the act referred to, and having in view the same general purpose. The thirtieth section of this last act is identical with the thirtieth section of the act of 1868 (which is hereinbefore set out), save that *nine* instead of *six* months was fixed as the period within which cities and towns, already incorporated, were to accept

the provisions of the act and in default of which all acts vesting them with power were repealed. (See Laws of Florida, 1869–71, p. 28.) This latter act also repealed the act of the same title approved August 30th, 1868.

To ascertain whether a charter creates a new corporation, or merely continues the existence of an old one, or what effect a repeal has, the plain and positive enactments of the statute and not collateral facts, must be looked to and must govern. The fact that the names are the same, that the corporators are nearly all the same, &c., is not at all conclusive.

Bellows v. Bank, 2 Mason, C. C. 41.

Wilson v. Tesson, 12 Indiana, 285.

Union B'r R. R. Co. v. E. T. & Ga. R. R. Co., 14 Ga., 327.

The legislative intent in the two acts mentioned is plain. The words used are not of doubtful import. They are as follows: "Upon a failure upon the part of *any incorporated town* or city to accept the provisions of this act, within nine months after its approval, *all the acts vesting such city or town with power are hereby repealed.*"

The corporation is a mere legal abstraction—a mere legal entity. What act can it perform, what power has it, when *all the acts vesting it with power are repealed?* Without some law authorizing it to exist, how can there be a corporation? Such a thing is a legal impossibility.

The purpose of the acts of 1868 and 1869 is plain. The Constitution of Florida provides "that the Legislature shall establish a uniform system of county, township and municipal government." Constitution of 1868, Art. IV, § 21. To conform to the Constitution, the Legislature passed these acts. It might have declared that all towns and cities should have only the powers and rights given in these acts, and have imposed these powers upon them, without regard to their action or wishes. The Legislature, however, had the discretion to pass the general laws, and leave it optional with the towns already incorporated to take advantage of them, *or cease to exist as corporations.* It was plainly the purpose of the Legislature, under the laws which it passed, that if incorporated

towns did not accept the terms of the general law, they should cease to exist. If this were not so, the cities incorporated *before* the passage of the general laws, by refusing to accept their provisions would still exist under their old charters and the system of municipal corporations existing would not be *uniform*.

If after the charter of Pensacola was repealed, its citizens formed an incorporation under the general law (as though Pensacola had never been incorporated), the corporation thereby created, if a lawful organization, is certainly a *new* corporation. To hold that such organization was but the revival of the old corporation, would be to add the following proviso to the end of the 30th section of the act of February 4th, 1869—*provided*, that although "all acts vesting power" in any incorporated city (which failed to accept the provisions of this act within nine months) are "repealed" by this act, *yet if after such powers are repealed*, the citizens of the formerly incorporated town, organize a municipal government under the general provisions of this law, (for municipal organization where none previously existed,) *the corporation thus created shall be the same corporation in law* as the one whose powers were taken away by the repeal of the acts giving them power, for their failure to act within the time prescribed.

See Wilson v. Tesson, 12 Indiana, 285.

3 Howard, 326; 13 Howard, 429; 6 Indiana, 146; 16 Barbour, 16; 14 Ga. 327.

Erie & North East R. R. Co. v. Casey, 26 Penn. St. Reports, 287.

Municipal corporations are completely subject to the will of the legislature. It may destroy them at pleasure, and there is no limit to the legislative power in this respect, save that it can not kill or impair vested contract rights acquired against such corporations.

Cooley, Cons. Lim. p. 192 (edition of 1868,) note 2.

Dillon on Municipal Corporations, vol. 1, § 114.

See, also, U. S. v. R. R. Co., 17 Wallace, 328–9.

A repeal of a municipal charter does not violate the obligation of contracts—(Mumma v. Potomac Co., 8 Peters 281.)

These survive, and may be enforced after the repeal of the charter.

Dillon on Municipal Corporations, vol. 1, § 114.

The power to repeal and the purpose to repeal being plain, what is the result? The city of Pensacola, chartered under the acts of 1839 and amendments, ceased to have any corporate existence, and ceasing to have corporate existence can not be sued, certainly not at law.

EFFECT OF DISSOLUTION OF CORPORATION.

Upon the dissolution of the corporation in any mode, all suits pending for or against it abate.

Greely v. Smith, 3 Story, 657.

Merrill v. Suffolk Bank, 31 Maine, 17–57.

Ingraham v. Terry, 11 Humph., 572.

Saltmarsh v. Planters' Bank, 17 Ala. 761.

Paschall v. Whitsett, 11 Ala.

It has no longer any legal existence, and can not sue or be sued; certainly not in a court of law. "When a corporation surrenders its charter * * it becomes *defunct* and the suit abates, unless the legislature by some act saves a right of action."

3 Story, C. C., 657.

Davis v. Fairbarron, 3 Howard, 636.

Norris v. Crocker, 13 Howard, 429.

Penn. & Ind. R. R. Co. v. Bradshaw, 6 Ind. 146.

Dexter & Lime P. R. Co. 16 Barbour, 15.

Union Br. R. R. Co. v. E. T. & Ga. R. R. Co. 14 Ga. 327.

The corporation having been dissolved, the appellant has no remedy at law. Whom is he to sue? The only remedy

IS IN EQUITY.

"The jurisdiction of the court of equity to reach the property of a debtor justly applicable to the payment of his debts, even when there is no specific lien on the property, is *undoubted*. It is a very ancient jurisdiction. * * *Unless the suit relates to estate of a dead person*, the debt must be established by some judicial proceedings, and it must generally be

shown that all legal means for its collection have been exhausted."

Public Works v. Columbia College, 17 Wallace, 530–1.

It is no valid objection to orator's bill that his demand was not reduced to judgment. He could not get a judgment at law because there was no legal entity to sue. His debtor corporation has ceased to exist. Independently of this—his demand not sounding in damages merely—his equities give him a right to call upon a court of equity without having reduced his debt to judgment.

Pharis v. Leachman, 20 Ala. 677.

17 Wallace, 530.

Such a defunct corporation has always been subject to the ancient jurisdiction of equity as to trusts and administration of estates

Foster v. Essex Bank, 16 Mass. 270–274.

"*The withdrawal of the charter*—that is, the right to use the corporate name for the purpose of suits before the ordinary tribunals—*is such a substantial impediment* to the prosecution of the rights of the parties interested, whether creditors or debtors, *as would authorize equitable interposition in their behalf*, within the doctrine of chancery precedents."

Bacon v. Robertson, 18 Howard, p. 486.

There is, however, another specific ground upon which the equity of the bill may be rested. The remedy at law—if there be one—is not adequate. "It is not enough that there is a remedy at law. It must be plain and adequate, or in other words, as practical and efficient to the ends of justice and its prompt administration, as the remedy in equity."

Payne v. Hook, 7 Wallace, 430.

Boyce Ex'rs v. Grundy, 3 Peters, 210.

The legislature may destroy a corporation, but it can not destroy or impair the obligation of contracts made by such defunct corporation, or repeal a law authorizing special taxation for the payment of a debt it was authorized to contract. Such power remains—is a *trust* to be exercised for the benefit of the creditor, and in equity will be regarded as "*the property*" of the defunct corporation to be administered for

the satisfaction of its debts.—Beloit v. Morgan, 7 Wallace, 613. Otherwise the constitutional inhibition against violating or impairing the obligation of contracts, would be disregarded.—Von Hoffman v. Quincy, 4Wallace. 535. No repeal of a charter can destroy contract rights of creditors.

Curran v. Arkansas, 15 Howard.

Thompson v. Lee County, 3 Wallace, 327.

Butz v. Muscatine, 8 Wallace, 583.

And, if as is contended by the city of Pensacola, the acts of the legislature have so altered or destroyed the old corporation, that it is unable any longer to administer its trust—*the taxing power*—the difficulty is easily answered by JUSTICE GRIER, (in Girard v. Philadelphia, 7 Wallace, 13) who says: "If this were true, the only consequence would be, not that the charity or *trust should fail*, but that the *Chancellor should substitute another trustee.*" In such a case equity will always provide a trustee.

Bacon v. Robertson, 18 Howard, 312.

The present corporation is the only necessary and proper party defendant to this bill. It has taken possession of the municipal government. It is the medium through which the city collects taxes. To it the State delegates a portion of its police power. The law authorizing the taxation provides that it shall be collected "in the same manner as other taxes." The taxes to be collected concern the inhabitants whose organ this present corporation is. It controls the property sought to be taxed. Its officers are, perhaps, the most suitable, and it may be only instrumentalities by which a court of equity can supply a trustee. It must be that the present corporation is such a representative of the old as may be sued in equity, at least to ascertain the amount due by the old corporation and lay the foundation for proceedings to collect it. The individual inhabitants who composed the old corporation are certainly not its representatives or successors. If this be not the case, the repealing act kills the old corporation and kills its debt; for, although a contract inviolable exists, the legislature has prevented any suit to

enforce the contract or ascertain the amount due on it, and cut off *all* remedy for its enforcement. Such proceedings "*impair*" the obligation of the contract, and no alteration of the "remedy," which impairs the obligation of the contract, can stand in the way of the Constitution.

Commissioner's Court v. Rather 48 Ala. 447, and authorities there cited.

White v. Hart, 13 Wallace, 686.

The present case is essentially different from that of Rees v. City of Watertown, 19 Wallace, 124. Here there is "a *want* of a *remedy*" at law. There there was only the "*inability to obtain the fruits of a remedy*," which was "*in law and in theory* complete."

Conceding that the Court, in the absence of an express statute, can not appoint *its own officer* to levy, assess and collect a tax, it does not follow that the Court can not appoint the *officers of the present corporation*, (who have authority to levy and collect taxes,) and compel them to levy and collect a sufficient tax to pay appellants. The act of 1853, authorizing such taxation, is a contract, not repealable, and is sufficient authority for the present officers. In this particular, also, this case is distinguished from Rees v. Watertown.

It is respectfully suggested that the Court below, in denying *any* relief upon the facts stated in the bill, effectually repealed the constitutional prohibition against laws impairing the obligation of contracts.

What avail is that provision, if the many millions of corporate indebtedness of the cities and towns in Florida can be extinguished by so simple a process as repealing their charters?

SAM'L F. RICE,
*Attorney for Appellant.*

R Phillips,
for appellant